

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

**SARA BARKER and
JERRY BARKER,**

Plaintiffs,

vs.

**CRACKER BARREL OLD
COUNTRY STORE, INC.,**

Defendant.

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CIVIL ACTION

FILE NO. _____

**DEFENDANT CRACKER BARREL OLD COUNTRY STORE, INC.'S
NOTICE OF REMOVAL**

COME NOW, **CRACKER BARREL OLD COUNTRY STORE, INC.**, a Defendant in the above-styled civil action, and hereby removes Civil Action File No. 22CV72533 from the Superior Court of Gordon County to the United States District Court for the Northern District of Georgia, Rome Division, pursuant to Fed. R. Civ. P. 81(c) and 28 U.S.C. §§ 1332, 1441 and 1446, and as grounds for its removal states as follows:

STATEMENT OF THE CASE

1.

Defendant Cracker Barrel Old Country Store, Inc. has been sued in a civil

action brought in the Superior Court of Gordon County, which is located within the Rome Division of the United States District Court for the Northern District of Georgia. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all of the process, pleadings, orders and documents from the Superior Court Action have been attached as Defendant Cracker Barrel Old Country Store, Inc.’s Exhibit 1 (hereinafter “Ex. 1”).

2.

The present matter is an action for damages for bodily injuries stemming from a May 12, 2021 incident alleged to have occurred at Defendant Cracker Barrel Old Country Store, Inc.’s restaurant and store located at 100 Cracker Barrel Drive Calhoun, Georgia 30701 (hereinafter “the subject incident”). Ex. 1, Complaint, ¶ 4. Plaintiff makes claims against Defendant Cracker Barrel Old Country Store, Inc. for (i) ordinary negligence (ii) failure to correct a dangerous condition, (iii) failure to warn and (iv) loss of consortium. *Id.*, Complaint, ¶¶ 13-17.

3.

The Complaint was filed July 25, 2022, in the Superior Court of Gordon County, Civil Action File No. 22CV72533. *See* Ex. 1, Complaint. Defendant Cracker Barrel Old Country Store, Inc. was served with the Summons and Complaint on August 2, 2022.

DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332(a)

4.

Upon information and belief, Plaintiffs Sara Barker and Jerry Barker are a citizens of the State of Georgia. Defendant Cracker Barrel Old Country Store, Inc. is, and was at the time this lawsuit was filed, a corporation organized under the laws of the State of Tennessee with its principal place of business in the State of Tennessee. Therefore, there is complete diversity of citizenship between the parties.

5.

Plaintiffs contend that “as a consequence of her fall, Plaintiff Sara Barker fractured both of her wrists, fractured her knee cap and suffered a broken nose.” *See* Ex. 1, Complaint, ¶ 9. Plaintiffs also contend that “Plaintiff Sara Barker’s slip and fall, as hereinabove described, caused her to sustain injuries and damages.” *Id.*, Complaint, ¶ 12. Defendant Jerry Barker is also asserting a claim for loss of consortium. *Id.*, Complaint, ¶ 24. Plaintiffs assert that Plaintiff Sara Barker has incurred \$92,949.42 in medical bills. Further, Plaintiffs asserted a settlement demand for \$250,000.00.

6.

In determining whether the requisite \$75,000.00 amount in controversy has been established, jurisdiction “is proper if it is facially apparent from the complaint

that the amount in controversy exceeds the jurisdictional requirement.” *Williams v. Best Buy Co., Inc.*, 269 F.3d 1319 (11th Cir. 2001). In the present case, given the damages claimed by Plaintiff, it is facially apparent from Plaintiff’s Complaint that the requisite \$75,000.00 amount in controversy requirement has been met.

**ALL PROCEDURAL REQUIREMENTS
FOR REMOVAL HAVE BEEN SATISFIED**

7.

This Notice of Removal is filed within 30 days from the date that Defendant Cracker Barrel Old Country Store, Inc. has been served with the Summons and Complaint in this matter. Removal is, therefore, timely in accordance with 28 U.S.C. § 1446(b).

8.

Pursuant to 28 U.S.C. 1446(b)(2)(A), “all defendants who have been properly joined and served must join in or consent to the removal of the action. As such, Defendant Cracker Barrel Old Country Store, Inc. expressly consents to the removal of this action and the requirements of 28 U.S.C. § 1446(b)(2)(A) have been met.

CONCLUSION

By this Notice of Removal, Defendant Cracker Barrel Old Country Store, Inc. does not waive any objections it may have as to service, jurisdiction or venue, or any other defenses or objections it may have to this action. Defendant Cracker Barrel

Old Country Store, Inc. intends no admission of fact, law or liability by this Notice and expressly reserves all defenses, motions and/or pleas.

WHEREFORE, Defendant Cracker Barrel Old Country Store, Inc. prays that the case be removed to the United States District Court for the Northern District of Georgia, Rome Division.

This 31st day of August, 2022.

**CRUSER, MITCHELL, NOVITZ,
SANCHEZ, GASTON & ZIMET, LLP**

Meridian II, Suite 2000
275 Scientific Drive
Peachtree Corners, GA 30092
(404) 881-2622
(404) 881-2630 (Fax)
cbryant@cmlawfirm.com
jrussell@cmlawfirm.com
rcruser@cmlawfirm.com

/s/ Candice R. Bryant

CANDICE R. BRYANT
Georgia Bar No. 807404
JANELLE RUSSELL
Georgia Bar No. 630113
J. ROBB CRUSER
Georgia Bar No. 199480
Attorneys for Defendant

CERTIFICATE OF COMPLIANCE

Undersigned counsel certify the foregoing document has been prepared with one of the font and point selections (Times New Roman, 14 point) approved by the Court in Local Rule 5.1(C).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the undersigned has this day electronically filed the within and foregoing **DEFENDANT CRACKER BARREL OLD COUNTRY STORE, INC.'S NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

Brad J. McFall
GAMMON, McFALL, & VILLARREAL
P.O. Box 292
Cedartown, GA 30125
brad@gmvlawfirm.com
Attorney for Plaintiff

I FURTHER CERTIFY that the undersigned has mailed copies of the entire pleading referenced above to all counsel of record at the above address.

This 31st day of August, 2022.

**CRUSER, MITCHELL, NOVITZ,
SANCHEZ, GASTON & ZIMET, LLP**

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jrussell@cmlawfirm.com
rcruser@cmlawfirm.com

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Georgia Bar No. 807404
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J. ROBB CRUSER
Georgia Bar No. 199480
Attorneys for Defendant